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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218228

DATE: May 30, 1985

MATTER OF: J.E.D. Service Co.

DIGEST:

1. A bid bond may be required where payment and performance bonds also are required and the services covered by the solicitation are essential to the operation of a government installation. The rule applies whether or not the services covered are subject to the contingency of congressional approval before award.
2. GAO will not object to an agency's use, in an advertised procurement for food services, of minimum staffing requirements which reflect its minimum needs and are intended to ensure that those needs are met.

J.E.D. Service Co. protests the terms of invitation for bids (IFB) No. DABT23-85-B-0019, a small business set-aside issued by the Department of the Army for full food and dining attendant services at Fort Knox, Kentucky. The contract is for a 6-month base period with options to extend for four consecutive 1-year periods. Bid opening was February 26, 1985. J.E.D. protested to our Office on February 25, but did not submit a bid. Ten other firms did compete, and award is being withheld pending our decision.

We deny the protest.

J.E.D. first contends that the Army exceeded its authority in requiring a bid bond for one section of the IFB, Group II, because the solicitation stated that Group II work could not be awarded until congressional approval

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was obtained.^{1/} J.E.D. argues that in order to require a bid bond, the Army should have had authority to award a contract at the time the solicitation was issued.

The IFB included a notice that bid bonds were required, referencing Part IV, Section L, Paragraph 5. That paragraph stated that a "Bid Bond . . . in a penal sum of not less than 20 percent of the total bid price for Groups I, II, and V shall accompany each bid." The Army determined that the amount of the bid guarantee, 20 percent of the bid price, which is the minimum required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-3 (1984), was sufficient to cover the additional costs to the government should award of the contract be precluded. The solicitation also required performance and payment bonds. The Army justifies the imposition of the bonding requirements on the basis that the successful bidder will have extensive use of government furnished equipment and that the services in question are critical to the operation of the installation.

We agree with the Army that the essential nature of food services provides an adequate justification for requiring a bid bond; the FAR expressly authorizes the use of such bonds where, as here, performance and payment bonds are found to be necessary. See 48 C.F.R. § 28.101-1. The purpose of a bid bond is to protect the government from repurchase costs if the successful bidder fails to execute the required contract documents and submit the required performance and payment bonds. See Inland Service Corp., B-211202, Apr. 20, 1983, 83-1 CPD ¶ 425. The fact that award of the Group II section of the solicitation was subject to the contingency of congressional approval before award does not affect the validity of the bonding requirement; should the approval be forthcoming, the agency would indeed require the same protection that the bond affords. Moreover, all solicitations are potentially

^{1/}The work requested by Group II was previously the subject of a cost comparison study under Office of Management and Budget Circular No. A-76. Pursuant to the Department of Defense Authorization Act of 1981, Pub. L. No. 96-342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. No. 97-252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747, congressional notification is necessary before an award based on the cost comparison may be made.

subject to contingencies, such as cancellation for appropriate reasons or award for lesser quantities than those advertised. However, this possibility does not obviate the otherwise valid requirement that a bid be accompanied by a bond.

Second, J.E.D. argues that the Army's minimum staffing requirements, specifically for "first cooks," are not consistent for the various dining facilities listed in the solicitation, and do not coincide with generally accepted industry standards that would permit cooks to arrive shortly before the dining facility opens and to leave after it closes. J.E.D. also asserts that Army personnel told J.E.D.'s president to "place the first cooks on extended breaks." The Army responds that the manpower requirements in the solicitation reflect the minimum number of labor hours necessary for first cooks. Past substandard performance of contractors who cut back on the number of employees and their work hours, the Army argues, proved that staffing guidelines were necessary to ensure that its minimum needs would be met. The Army also denies that it told the protester to place its employees on extended breaks.

The responsibility for drafting specifications that reflect the minimum needs of the government is primarily that of the contracting agency, and we therefore will not question specifications in the absence of showing that they do not reflect the agency's minimum needs. Winandy Greenhouse Co., Inc., B-208876, June 7, 1983, 83-1 CPD ¶ 615. Moreover, our Office has specifically found the use of minimum manning requirements in advertised procurements to be permissible. See Palmetto Enterprises, Inc., et al., B-193843, et al., Aug. 2, 1979, 79-2 CPD ¶ 74. J.E.D. has done no more than disagree with the manning levels for different dining facilities that reflect the reasoned judgment of the Army personnel responsible for food services at Fort Knox. This does not provide us a basis for questioning the solicitation's manning levels. Dragon Services, Inc., B-213041, Mar. 19, 1984, 84-1 CPD ¶ 322.

In addition, the protester's assertion that the contracting officer told it to place cooks on extended breaks is not supported by other evidence. The contracting officer denies that he made that statement and asserts that he told J.E.D. that the management of employees was the responsibility of the contractor. This is supported by

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Technical Exhibit 12 of the solicitation, which states that it is the contractor's responsibility to ascertain the manhours required to perform the work so long as the minimum staffing hours are met. From this record, we can only conclude that the protester has not met its burden of affirmatively proving its case. Canon U.S.A., Inc., B-213554, Aug. 20, 1984, 84-2 CPD ¶ 195.

We deny the protest.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel